

*NOTE: This language in this document is proposed and is subject to amendment.*

## **TITLE 312 NATURAL RESOURCES COMMISSION**

### **Proposed Rule LSA Document #08-614**

#### **DIGEST**

Amends 312 IAC 6 for navigable waters and amends 312 IAC 10 for non-navigable waters to address general licenses and individual licenses for the extraction of sand, gravel, rock, and slab rock. Effective 30 days after filing with the Publisher.

**312 IAC 6-2-3.3**  
**312 IAC 6-5-9**  
**312 IAC 10-2-16.5**  
**312 IAC 10-5-9**  
**312 IAC 10-5-10**

SECTION 1. 312 IAC 6-2-3.3 IS ADDED TO READ AS FOLLOWS:

**312 IAC 6-2-3.3 “Creek rock” defined**  
**Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8**  
**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 3.3. “Creek rock” means each of the following located within a waterway:**

- (1) Sand.**
- (2) Gravel.**
- (3) Rock.**
- (4) Slab rock.** *(Natural Resources Commission; 312 IAC 6-2-3.3)*

SECTION 2. 312 IAC 6-5-9 IS ADDED TO READ AS FOLLOWS:

**312 IAC 6-5-9 Creek rock removal from a navigable waterway; general license**  
**Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-28-1-8**  
**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 9. (a) Except as provided in subsection (d), this section establishes a general license for the removal of creek rock from a navigable waterway which is subject to IC 14-28-1, IC 14-29-1, or IC 14-29-3.**

**(b) To act under this section, a person must:**

**(1) if creek rock is to be removed from a parcel located in the riparian zone of an adjacent property owner, either:**

- (A) be a riparian owner for the parcel; or**
- (B) have written permission from a riparian owner for the parcel; and**
- (2) receive written permission from the department in the conduct of its responsibilities under IC 14-19-1-1(9). The permission under this subdivision is a proprietary function for the public trust and is not a licensure function.**

**(c) Without a written license under IC 14-28-1, IC 14-29-1 or IC 14-29-3, and without notice to the department other than as anticipated by subsection (b)(2), a person**

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**may remove creek rock from the parcel, if the person satisfies each of the following conditions:**

- (1) Not more than ten (10) cubic yards of creek rock is removed within one (1) calendar year from the parcel.**
- (2) The creek rock is removed exclusively by the following methods:**
  - (A) Hand.**
  - (B) Hand tools.**
- (3) The creek rock is removed between July 1 and March 31 of the following year.**
- (4) The creek rock is removed only from sand bars and gravel bars within the waterway. The excavation of waterway banks does not qualify under this subdivision.**

**(d) An individual license is required under IC 14-28-1 and this article for the removal of creek rock from Lake Michigan. (*Natural Resources Commission; 312 IAC 6-5-9*)**

SECTION 3. 312 IAC 10-2-16.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-2-16.5 “Creek rock” defined**

**Authority: IC 14-10-2-4; IC 14-28-1-5**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 16.5. “Creek rock” means each of the following located within a waterway:**

- (1) Sand.**
- (2) Gravel.**
- (3) Rock.**
- (4) Slab rock. (*Natural Resources Commission; 312 IAC 10-2-16.5*)**

SECTION 4. 312 IAC 10-5-9 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-5-9 Creek rock removal from a non-navigable waterway; general license without notice**

**Authority: IC 14-10-2-4; IC 14-28-1-5**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 9. (a) Except as provided in subsection (d), this section establishes a general license without notice for the removal of creek rock from a waterway which is subject to IC 14-28-1. To act under this section, a person must own (or have written permission from a person who owns) the parcel of a waterway where creek rock is removed.**

**(b) Without a written license under IC 14-28-1 and without notice to the department, a person may remove creek rock from the parcel, if the person satisfies each of the following conditions:**

- (1) Not more than ten (10) cubic yards of creek rock is removed within one (1) calendar year from the parcel.**
- (2) The creek rock is removed exclusively by the following methods:**
  - (A) Hand.**
  - (B) Hand tools.**
  - (C) Scoop-type excavating equipment. The use of a bulldozer or rock crusher does not qualify under this clause.**
- (3) The creek rock is removed between July 1 and March 31 of the following year.**

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**(4) The creek rock is removed only from sand bars and gravel bars within the waterway. The excavation of waterway banks does not qualify under this subdivision.**

**(c) A navigable waterway is governed by 312 IAC 6. (Natural Resources Commission; 312 IAC 10-5-9)**

**SECTION 5. 312 IAC 10-5-10 IS ADDED TO READ AS FOLLOWS:**

**312 IAC 10-5-10 Creek rock removal from a non-navigable waterway; general license with notice**

**Authority: IC 14-10-2-4; IC 14-28-1-5**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 10. (a) Except as provided in subsection (j), this section establishes a general license with notice for the removal of creek rock from a waterway which is subject to IC 14-28-1. To act under this section, a person must own (or have written permission from the person who owns) the parcel of a waterway where creek rock is removed.**

**(b) Without a written license under IC 14-28-1 but with notice to the department, a person may remove creek rock from the parcel, if the person complies with this section.**

**(c) A person who wishes to remove creek rock under this section must file a written notice, on a department form, with the division of fish and wildlife. The notice must include the following information:**

**(1) Identification of the waterway and a description of the parcel where the removal would occur, including the following:**

**(A) Terminal points of the project.**

**(B) Access routes to the project referenced to a readily discernable landmark, such as a bridge or a dam.**

**(C) The project and access routes must be illustrated on at least one (1) of the following:**

**(i) United States Geological Survey topographic map; or**

**(iii) Another map determined by the department to satisfy the purposes of this clause.**

**(2) The name, address, and telephone number of the person who is seeking the general license. If any of the activities would be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.**

**(3) Documentation to demonstrate the person seeking the general license is the owner of the parcel (or has written permission from the person who is the owner of the parcel).**

**(4) A statement in which the person agrees to comply with the following conditions:**

**(A) Creek rock would be removed exclusively through the use of hand-operated equipment or mechanical means, such as an excavator with a bucket with minimal fallback, and would not be pushed and stockpiled. Examples of equipment that qualify for use under this clause include a small tractor, backhoe, or front-end loader. Examples of equipment that do not qualify under this clause include a bulldozer or a rock crusher.**

**(B) No access road would be constructed to do any of the following:**

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- (i) Destroy more than one-half (1/2) of an acre of trees within a floodway;
- (ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used;
- (iii) Raise the elevation of the flood plain; or
- (iv) Cross a waterway.

(C) Access to the project would be exclusively from one (1) side of the waterway.

(D) Not more than fifty (50) total cubic yards of creek rock would be removed from the waterway within one (1) calendar year.

(E) Extraction would be limited to the following:

- (i) July 1 through March 31 of the following year; and
- (ii) a maximum of thirty (30) days.

(d) The following areas do not qualify for a general license under this section:

(1) Within one-half (1/2) mile of any of the following:

(A) A species listed in the “Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern)”, Information Bulletin #2-Fourth Amendment (August 1, 2007), published in the Indiana REGISTER at 20070815-IR-312070469NRA.

(B) A known mussel resource.

(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(2) Within a river or stream listed in the Outstanding Rivers List for Indiana, Information Bulletin #4-Second Amendment (May 23, 2007), published in the Indiana Register at 20070530-IR-312070287NRA.

(3) Within a river or stream listed for limited use or as an outstanding state resource, under 327 IAC 2-1-11 or 327 IAC 1.5-19, unless a written authorization is provided by the Indiana department of environmental management.

(4) Within a river or stream listed pursuant to IC 13-18-2-3 as an impaired water where the cause of impairment is Impaired Biotic Communities.

(e) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the division of fish and wildlife shall provide a written response that does one (1) of the following:

(1) Approves the terms of the notice.

(2) Provides additional conditions to the approval.

(3) Requires additional information.

(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1.

If the department does not respond under this subsection in a timely fashion, the written notice is approved.

(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (d) must be posted by the person in a conspicuous location at the site of the project.

(g) The authorization for activities conducted under this section expires two (2) years after the date of issuance by the department.

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**(h) The authorization for activities conducted under this section does not waive permit requirements of other state, federal, or local government.**

**(i) A person who elects to act under this general license with notice must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under subsection (e). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or 312 IAC 10.**

**(j) A navigable waterway is governed by 312 IAC 6.** *(Natural Resources Commission; 312 IAC 10-5-10)*